



FOR IMMEDIATE RELEASE

For more information, contact:
Mike Gowrylow
(360) 570-6048

Yakama Tribe, State Reach Proposed Treaty-based Cigarette Tax Agreement

OLYMPIA, Wash., Dec. 14, 2007 — The Yakama Nation and State of Washington today announced a proposed new cigarette tax agreement that both parties believe reflects the Yakama's 1855 treaty with the United States and will work better for them than their existing agreement.

The Treaty-based agreement, which will need to be authorized by the Legislature, would require the Tribe to impose a tribal cigarette tax equal to 80 percent of the state cigarette tax for the first six years, 84 percent in the seventh year and 87.6 percent in the eighth year and beyond. At current state tax rates, the tax would begin at \$16.20 per carton and end at \$17.75 per carton.

As with all other Washington state/tribal cigarette tax agreements, all cigarettes sold on the reservation would need to bear a valid tribal tax stamp.

Tribal Chair Ralph Sampson said the agreement provides the Tribe with much-needed revenue, which is primarily used to fund burial and energy assistance programs for tribal members, while giving the Tribe an effective way to regulate individually owned smokeshops located on the reservation.

"The new compact is an affirmation of our Treaty and our sovereignty," Sampson said. "This Treaty-based agreement will bring much-needed tribal tax dollars to the Nation for us to provide essential governmental services to our members." All of the revenues would go to the Tribe, a feature consistent with agreements made with most other Washington tribes. The Puyallup Tribe transmits 30 percent of their cigarette tax revenue to the State on a quarterly basis.

The new agreement recognizes and is based upon "right to travel" Treaty language unique to the Yakama Nation, Revenue Director Cindi Holmstrom said. The Yakama Treaty of 1855 provides that

the Yakama Tribe and its members have “the right, in common with citizens of the United States, to travel upon all public highways.” The Yakamas are one of only two tribes in the country who signed treaties with the federal government that guaranteed them a Treaty travel right.

The benefit to the State would be an increase in the price of cigarettes charged by reservation smokeshops, narrowing the gap between the price charged by tribal and non-tribal retailers, she noted. The agreement also includes strong price controls, information sharing, auditing provisions, and the ability of either party to terminate it for cause.

The Tribe has agreed to provide the state with information about the transport of cigarettes and the sales to off-reservation customers within Washington State, and to allow the state access to reservation smokeshops for monitoring of stamps and pricing. Such protocols will help preserve the status quo with regard to cigarette sales and regulation on tribal reservations and in non-tribal communities throughout Washington.

The negotiations for the Treaty-based terms of the proposed Yakama compact were precipitated by a recent Ninth Circuit Court of Appeals decision regarding state and federal cigarette regulation and enforcement of the Yakama Nation and its members. In May 2007, the court ruled in the U.S. v. Smiskin case that the requirement to notify the state prior to transport of unstamped cigarettes violated a right to travel provision in the Treaty the Tribe negotiated with the United States in 1855, and that Yakama enjoys the “right to transport goods to market without restriction.”

The federal court decision is an important one. The Smiskin decision emphasized that the Yakama Nation “understandably assigned a special significance to each part of the Treaty at the time of signing and continues to view the Treaty as a sacred document today.”

“The compact is an example of how our sacred Treaty not only protects aboriginal practices like fishing, hunting and gathering but secures modern day trading practices,” Sampson said. Department of Revenue Tribal Liaison Leslie Cushman agreed that the Yakama Treaty of 1855 is not just an historical document, but a living document that is the law of the land.

In the context of Smiskin, the Yakama Treaty travel right prohibited federal agents from seizing cigarettes being transported by Yakama tribal members traveling from an Idaho Indian reservation to reservation smokeshops in Washington. The federal ruling severely impacts the ability of state and federal agents to interdict transport of unstamped cigarettes in Washington.

That is why the new agreement addresses the Smiskin ruling through post-travel information sharing. The Tribe's agreement to share this information is a recognition of the State's interest and need for consistent enforcement of state laws, Holmstrom noted, and the state in turn has agreed to share information with the Yakama Nation related to enforcement and regulation of the Treaty-based agreement.

"It really is a great mutual agreement," Holmstrom said. "It fills in the gaps where enforcement doesn't give us a well rounded approach and provides a solid framework for working together."

The Department will seek passage of enabling legislation during the 2008 legislative session beginning in January.

#